

Legislative Analysis



GUBERNATORIAL MEMORANDA OF UNDERSTANDING

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House Bill 4257 as reported from committee

Sponsor: Rep. Steven Johnson

Committee: Oversight

Complete to 4-22-21

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4257 would create a new act concerning the effectiveness of, and filing requirements for, a memorandum of understanding signed by the governor.

FISCAL IMPACT: The bill would have no fiscal impact on state or local units of government.

THE APPARENT PROBLEM:

Generally speaking, a memorandum of understanding, or MOU, is a formal, albeit nonbinding, agreement between two or more parties, often acting similarly to a letter of intent. MOUs often are used by governments and governmental agencies, private businesses, even foreign governments to forge partnerships in a project or mutually beneficial goal. For example, in early March of 2020, Governor Whitmer signed an MOU with Finland's Minister of Economic Affairs to "increase collaboration and innovation between Michigan and Finland related to clean technology industries, as well as autonomous energy storage and battery technologies."¹ Although press releases and news stories may inform the public of some MOUs signed by a governor, a copy of an actual document, as well as the existence of MOUs that did not make the news, may be difficult to discover.

This issue came to the forefront a few years ago when a search for a copy of a particular MOU regarding a trash agreement with Canada took more than a year to locate (it was eventually found in England). Some feel that specifying in law which governmental MOUs should be available to the public, and how the MOUs could be stored and accessed, would be helpful in tracking which gubernatorial MOUs may still be in force and avoiding a protracted search when the terms of an MOU need reviewing.

THE CONTENT OF THE BILL:

Under House Bill 4257, if a *memorandum of understanding* (MOU) signed by a governor would, according to its provisions, apply after the date that governor leaves office, the MOU would stay in effect during successive administrations until either a successive governor rejected it or it expired on its own.

Memorandum of understanding would mean an informal agreement between this state and another party that does not impose contractual duties or obligations on the state.

¹ https://www.michigan.gov/whitmer/0,9309,7-387-90499_90640-520840--,00.html

The bill would require a copy of an MOU “signed by the governor under this act” to be filed in the Office of the Great Seal and made available to the public. [Note: The bill contains no provisions concerning the signing of an MOU.]

Copies of each MOU would have to be posted on the Department of State internet website, and the Department of State would have to file a copy with each house of the legislature and with the Senate Majority Leader, the Senate Minority Leader, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives.

BACKGROUND INFORMATION:

House Bill 4257 is identical to Senate Bill 822 of the 2017-18 legislative session. That bill was passed by both chambers and ordered enrolled, but was subsequently vetoed by then Governor Snyder.

ARGUMENTS:

For:

As noted above, an MOU is often used by governments and governmental agencies, private businesses, and even foreign governments to forge partnerships in a project or mutually beneficial goal. Past examples include MOUs with the United Kingdom and Ontario, Canada, regarding advancements in the automotive sector.

Under House Bill 4257, a copy of each MOU signed by a governor would be required to be filed with the Office of the Great Seal, posted on the Department of State’s website, and filed with each chamber of the legislature. This would make it easier for policymakers and the public to see and read the MOUs a governor enters into. It also resolves the problem encountered a few years ago when a copy of the MOU regarding a trash agreement with Canada took nearly a year and half to locate and was eventually found in an office in England.

As many, but not all, MOUs contain an expiration date and provide for termination of the document either with or without cause, the bill should not add new limitations or restrictions to the language or function of an MOU. Typically, either party to an MOU can modify the terms or terminate it with proper notice. An MOU without a termination date would likely be reviewed and continued through successive governors in the same manner as one with a termination date that fell in a successor governor’s term of office.

It should be noted that the bill would apply only to an MOU signed by the governor. MOUs utilized by governmental agencies, such as a now-expired one between the Michigan Department of Community Health and the federal Centers for Medicare & Medicaid Services regarding a demonstration to integrate care for persons eligible for Medicare and Medicaid, would not be subject to the bill’s posting and filing requirements.

Against:

Although no arguments against the bill were raised during the committee process, some may see the bill as an example of a slippery slope regarding the constitutional separation of powers of the executive, judicial, and legislative branches of government.

In his veto message dated December 28, 2020, then Governor Snyder wrote, “Senate Bill 822 on its face appears to have a noble purpose—transparency. But it also has the potential to lead the way toward more routine legislative encroachment into regulating the activity of future governors. Therefore, I return Senate Bill 822 to you without my approval.”

He also noted that the MOUs he had signed as governor were available on the Michigan Economic Development Corporation’s website.

POSITIONS:

The Michigan Freedom Fund indicated support for the bill. (3-18-21)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.